::आयुक्त (अपील्स) का कार्यालय,वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

द्वितीय तल,जी एस टी भवन / 2nd Floor, GST Bhavan

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot – 360 001

Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा:- DIN-20220564SX000000DAAF

क	अपील / फाइलसंख्या/ Appeal /File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/45/GDM /2021	54/DC/Anjar Bhachau/20-21	30-04-2021

अपील आदेश संख्या(Order-In-Appeal No.):

KCH-EXCUS-000-APP-021-2022

आदेश का दिनांक / Date of Order:	28.04.2022	जारी करने की तारीख / Date of issue:	23.05.2022

श्री अखिलेश कुमार, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Akhilesh Kumar, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/वस्तु एवंसेवाकर,राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham:

घ अपीलकर्ता/प्रतिवादी का नाम एवं पता /Name & Address of the Appellant/Respondent :-

1. **M/s Anjali Cable Network, Vondh Naka Bahar, Railway Station Road,, Bhachau - Kutch (370 140).**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क ,केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम ,1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है ।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to: -

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए ।/

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट)की पश्चिम क्षेत्रीय पीठिका,,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए ।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए । इनमें से कमें से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग ,ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग ,ब्याज की माँग और लगाया गया जुर्माना,रुपए 5 लाख या उससे कम,5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए । संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है । स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा ।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम,1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी । /
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगे।//

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार कोपुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलो में, केंद्रीय उत्पाद शुल्क अधिनियम,1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में।/
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए है।/
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली,2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए । उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /
The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए ।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /
Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं । /
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.

:: ORDER-IN-APPEAL ::

M/s. Anjali Cable Netwrok, Bhachau (hereinafter referred to as "Appellant") has filed present appeal against Order-in-Original No. 54/DC/Anjar Bhachau/20-21 dated 30.04.2021 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST, Division Anjar Bhachau (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant, registered under the Finance Act, 1994 (herein after referred to as "the Act"), was engaged in providing taxable services under the category "cable operator". During the course of audit, it was noticed that the Appellant was not discharging service tax liability on certain charges such as cable wire/set top box charges recovered from their customers. On the basis of above observations, further proceedings were carried out by the officers of the Kutch Commissionerate. On the basis of statements of the Proprietor and documents examined during the course of said proceedings, it appeared that by excluding the value of cable wires and set top box, from the value of taxable services provided to the customers, the Appellant had short paid service tax amounting to Rs. 9,48,691/- during the period F.Y. 2014-15 to F.Y. 2017-18 (up to June, 17). Accordingly, a SCN dated 25.06.2020 was issued to the appellant by the Assistant Commissioner (AE), CGST Commissionerate, Gandhidham(Kutch), proposing recovery of service tax amount of Rs. 9,48,691/- under proviso to sub-section(1) of Section 73 of the Act along with interest under Section 75 of the Act. Penalty under Sections 76, 77 and 78 of the Act was also proposed in the SCN.

2.1 The SCN was adjudicated vide the impugned order by the adjudicating authority. During the course of adjudication, it was observed by the adjudicating authority that the sale of cable wire, pins and other material did not fall under the definition of service and would attract VAT and not service tax. Accordingly, he dropped the demand of service tax on income earned from sale of above materials to the tune of Rs. 4,18,091/-. However, the adjudicating authority came to the conclusion that the Appellant was liable for payment of service tax amount of Rs. 5,30,600/- on an amount of Rs. 37, 90,000/- earned during the Financial Year 2015-16 for the set top box charges. He has accordingly confirmed the demand of service tax of Rs. 5,30,600/- along with interest. He has also imposed penalty of Rs. 10,000/- and Rs. 5,30,600/- under Section 77 & 78 of the Act respectively.

3. Being aggrieved, the Appellant preferred the present appeal contending, *inter-alia*, as under:

(i) After the set top boxes were made mandatory, GTPL provided set top boxes in bulk to them for which amount was paid /deposited in advance and later when these boxes were installed successfully at customer's place, they recovered the same amount from customers as deposit/reimbursement. If any customer returned the set top box, the amount was refunded by GTPL to them on the basis of condition of set top boxes received;

(ii) At the time of recording statements, he (the proprietor) had answered all the questions asked by the officers regarding his service /business and had given all the details as required. Regarding set top boxes, he stated that GTPL collects a deposit of Rs.1200/- per set top box and the same amount is recovered from the customers. He was a pure agent and there was no profit margin involved in supply of set top box. The amount has been refunded by GTPL when the set top box is returned by the customer based on the condition in which set top box was received from the customer and department has also confirmed this fact on the telephonic conversation with GTPL;

(iii) Without considering and verifying his statement, SCN was issued, therefore principle of natural justice is not followed as per Section 9D of Central Excise Act, 1944;

(iv) The Appellant's case falls under the definition of "Pure Agent" given under Rule 5(2) of Service Tax (Determination of value) Rules, 2006. The adjudicating authority might have misinterpreted or misunderstood his service which is provided as pure agent;

(v) The expenditure or costs incurred by the service provider as pure agent are excluded from the value of taxable service and the amount of Rs.37,90,000/- received as reimbursement / deposit from service recipient is not liable to service tax as per Rule 5(2) of the valuation rules;

(vi) As no service tax liability arise interest under Section 75 of the Act is not recoverable. The Appellant has not contravened any rules and provisions of the Act so penalty under Section 77 of the Act should not be imposed;

(vii) There is no service tax short levied or short paid by reason of fraud or collusion or willful misstatement or suppression of facts with an intent to evade payment of service tax so penalty under Section 78 of the Act should not be imposed.

4. Personal hearing in the matter was conducted in virtual mode through video conferencing on 05.04.2022. Shri Hitendra Thacker, Authorized Representative, appeared on behalf of the Appellant. He re-iterated submission made in appeal memorandum. He also stated that he would submit documents from GTPL as part of additional submission.

4.1 The Appellant has filed additional submission dated 20.04.2022, inter-alia, contending that

(i) He is a local cable operator (LCO) of GTPL Hathway Ltd and engaged in providing cable services to the subscribers on behalf of GTPL and have been regularly paying taxes thereon and any interest liability their arises since the inception;

(ii) When the government made set top box (STB) compulsory, GTPL provided STB and he installed the same on the place of customer on behalf of the GTPL as per the interconnect agreement between GTPL Hathway Ltd and the Appellant and as per this agreement;

Point 9.7.7 Not swap the STBs with any other STBs without written consent of GTPL.LCO acknowledges that GTPL is owner of all the STBs installed in the area of LCO and LCO shall be liable to return the same to GTPL, if LCO wish to take services from any other MSO. LCO shall not migrate to any other MSO without clearing its dues and returning all STBs to GTPL in proper working condition.

(iii) Also attached herewith confirmation from the GTPL Hathway Limited that he had installed the set top box on behalf of the GTPL and worked as pure agent as per the definition in service tax. The department wrongly calculated tax on such set top box which I have just installed as per our agreement.

5. I have carefully gone through the facts of the case, the impugned order, the Appeal Memorandum, oral submissions made at the time of personal hearing and additional submission made by the Appellant. The issue to be decided in the present appeal is as to whether the impugned order, confirming demand of service tax of Rs. 5,30,000/- along with interest and penalty, in respect of set top box charges collected by the Appellant, is legally correct or otherwise.

6. It is observed from the case records that the Appellant, as cable operator for GTPL, had provided line connection to their customers for satellite view of channels through the set top boxes of the GTPL. The Appellant had procured the set top boxes from GTPL and installed the same at the premises of the customers and recovered an amount of Rs. 37,90,000/- during the Financial Year 2015-16, which is reflected as income in the accounts of the Appellant. They had not included the above amount in the value of taxable service and not paid service tax thereon.

6.1. The adjudicating authority, after considering the submission made by the Appellant, has come to the conclusion that the amount of Rs. 37,90,000/- recovered from the customers during the F.Y. 2015-16 towards set top boxes, is required to be included in the value of services as per Section 67 of the Act even if it is considered as reimbursement and the Appellant is required to pay service tax thereon along with interest and penalty.

6.2 The Appellant has contested the demand on the ground that the GTPL provided the set top boxes to them for which amount was paid / deposited in advance and later when these boxes were installed, they recovered the same amount from customers as deposit/ reimbursement. The Appellant has further argued that he is a "pure agent "in terms of definition given in Rule 5(2) of Service Tax (Determi8nation of Value) Rules, 2006) ("the Valuation Rules") and hence the amount of Rs. 37.90,000/- received as reimbursement /

deposit from service recipient is not liable to service tax as per Rule 5(2) *ibid* .

6.3 Further, the Appellant in his additional submission has furnished a copy of agreement entered in the month of July-2019 with M/s. GTPL Hathway Ltd to argue that he had installed set top boxes on behalf of GTPL and worked as pure agent as per the definition of pure agent given under the Act.

6.4 In order to examine the Appellant's claim as pure agent of GTPL, it is pertinent to refer to the provisions of Rule 5 of the Valuation Rules which are reproduced below:-

> ***RULE 5. Inclusion in or exclusion from value of certain expenditure or costs.*** *— (1) Where any expenditure or costs are incurred by the service provider in the course of providing taxable service, all such expenditure or costs shall be treated as consideration for the taxable service provided or to be provided and shall be included in the value for the purpose of charging service tax on the said service.*
>
> *[**Explanation**.- For the removal of doubts, it is hereby clarified that for the [the value of the telecommunication service shall be the gross amount paid by the person to whom telecommunication service is actually provided].]*
>
> *(2) Subject to the provisions of sub-rule (1), the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely :-*
>
> > *(i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods or services procured;*
> >
> > *(ii) the recipient of service receives and uses the goods or services so procured by the service provider in his capacity as pure agent of the recipient of service;*
> >
> > *(iii) the recipient of service is liable to make payment to the third party;*
> >
> > *(iv) the recipient of service authorises the service provider to make payment on his behalf;*
> >
> > *(v) the recipient of service knows that the goods and services for which payment has been made by the service provider shall be provided by the third party;*
> >
> > *(vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;*
> >
> > *(vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and*
> >
> > *(viii) the goods or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.*
>
> ***Explanation 1.*** *- For the purposes of sub-rule (2), "pure agent" means a person who -*

(a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;

(b) neither intends to hold nor holds any title to the goods or services so procured or provided as pure agent of the recipient of service;

(c) does not use such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

***Explanation 2.** - For the removal of doubts it is clarified that the value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration is indicated separately in the invoice.*

It is apparent from the above provisions that the Appellant must satisfy all the requirements of definitions of "pure agent" given in Explanation 1 to Rule 5(2) of the Valuation Rules as reproduced above in order to be considered as pure agent of GTPL.

6.5 I find that the Appellant has not furnished any agreement showing that GTPL has engaged him as its pure agent to incur expenditure or costs in the course of providing taxable service. The copy of agreement dated 15th July, 2019 furnished by them is pertaining to the GST era and hence does not support the Appellant's contention. The Appellant has also failed to illustrate as to which taxable service provided by them to GTPL and what types of expenditure / cost incurred by him on behalf of GTPL. I also find that it is the Appellant who paid the set top box charges in advance to the GTPL and provided the cable services to his customers using the signals of TV channels received from GTPL. Thus, I find that the criteria (a) of the definition of "pure agent" *ibid* is not satisfied and hence the Appellant cannot be considered as "pure agent" of GTPL.

6.6 The valuation of taxable services is governed by the Section 67 of the Act. The relevant provisions of the Section 67 are extracted below:-

***SECTION [67. Valuation of taxable services for charging service tax.** — (1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —*

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided

or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

***Explanation.** — For the purposes of this section, —*

(a) "consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service, except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.'

I find that set top boxes are pre-requisite for providing cable operator services and any amount collected towards the same must be included in the value of taxable services as cable operator in terms of Section 67(1) of the Act supra. Hence, the amount of Rs. 37,90,000/- recovered by the Appellant, under whatever name from the customers, is required to be included in the value of taxable service provided by him. In this regard, I also rely upon the judgment of Hon'ble Tribunal in the case of M/s. UCN CABLE NETWORK PVT LTD Vs. CCE, Nagpur (2016-TIOL-2529-CESTAT-MUM). The Hon'ble Tribunal at para 7.1 of the above judgment has observed as under:-

7.1. We find that, as regards, the tax liability on set top boxes, it is recorded that the appellant is charging rentals for set-top boxes from their customers and the said amount as recovered is shown in their books of accounts as lease/rental. It has been held correctly by the adjudicating authority that set top boxes are integral part of the services provided by the appellant as the same enhanced the receipt of the signals by the customers of the appellant. Hence the lease amount received by the appellant is liable to be taxed under the said services.

In view of above, I hold that the Appellant is required pay service tax on the amount of Rs. 37,90,000/- recovered by them towards set top box during the Financial Year 2015-16 along with interest under Section 75 of the Act.

7. The Appellant has also argued that the impugned order has been passed without verifying statement and hence, principle of natural justice was not followed as per Section 9D of the Central Excise Act, 1944. I find the Appellant has not alleged that the statement

of the proprietor was recorded under threat or duress. I further find that the adjudicating authority, while relying on the statement of the proprietor of the Appellant himself, has observed as under:-

> *"Since, the noticee has not retracted his statement and also has not negated his statement in the defence reply, it can be logically concluded that the noticee has not objection to the facts mentioned in the statement made by the proprietor."*

From the above observations, it is clear that the statement of the proprietor was voluntary which had not been retracted. It is also observed that the impugned order has been passed considering the defense reply filed by the Appellant as well as submission made by his representative during the course of personal hearing. Hence, in my opinion there is no violation of principle of natural justice in passing the impugned order by the adjudicating authority.

8. Further, as observed by the adjudicating authority, the Appellant had not shown the correct taxable value in ST-3 returns and this fact was disclosed only during the course of audit and subsequent investigation by the department. Thus, there was suppression of facts on the part of the Appellant for which penalty under Section 78 of the Act has been rightly imposed. I also find that the penalty under Section 77 of the Act is rightly imposed by the adjudicating authority.

9. In view of the above findings, I uphold the impugned order and reject the appeal filed by the Appellant.

10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

10. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested

केतन दवे
Ketan Dave
अधीक्षक (अपील)
Superintendent (Appeal)

28th April, 2020
(Akhilesh Kumar)
Commissioner (Appeals)

By RPAD

To M/s. Anjali Cable Network, Vondh Naka Bahar, Railway Station Road, Bhachau-Kutch-370140.	M/s. अंजलि केबल नेटवर्क, वोंध नाका के बाहर, रेलवे स्टेशन रोड, भचाऊ-कच्छ-370140.

प्रति:-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।

2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीधाम आयुक्तालय, गांधीधाम को आवश्यक

कार्यवाही हेतु।

3) उपायुक्त, केंद्रीय जीएसटी, मंडल अंजार भचाऊ को आवश्यक कार्यवाही हेतु।

4) गार्ड फ़ाइल।